UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

FUNDACION DR. MANUEL DE LA
PILA IGLESIAS, INC., *D/BIA* HOSPITAL
DR. PILA

Employer ~

Case 24-RC-8291

and

SINDICATO INDEPENDIENTE DE
CLINICAS Y HOSPITALES DEL SUR,

Petitioner

DECiSiON AND DIRECTION OF ELECTION

Upon a petition dully filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding[2], the undersigned finds:

1 The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Empioyer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

1 The Employer's name flas been amended and appears as stated at the heanng.
2 The Employer, Petitioner, and Sindicato Puertornqueno de Trabajadores, hereinafter the Intervenor, filed briefs which were duly considered. As more fully discussed herein, the Intervenor was granted intervention status on the basis of a recently expired collective bargaining agreement
~ The Employer, a Puerto Rico corporation. is engaged at its Ponce, Puerto Rico, facilities in providing acute health care and hospital services. During the past 12 months, a period representative of its operations generally, the Employer purchased and caused to be shipped to its place of business goods valued in excess of $50,000.00, directly from points ar~d places located outside Puerto Rico.

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3. The Union is a labor organization within the meaning of Section 2(5) the Act.[4]

4. Since 1973 the Employer and the Intervenor have had successive collective bargaining agreements covering the five separate units included in the instant petition. The last such agreement expired by its terms on August 1, 2000 and then was mutually extended until August 31, 2002. After several meetings in October 2002, the parties finally agreed to a stipulation embodied in a document entitled ~Agreement Points for a Collective Bargaining Agreement, Fundaciôn Dr. Pila y Sindicato Puertorriqueño de Trabajadores" which was signed on October 29, 2002. The following day, the Petitioner filed the instant petition seeking to represent the same unit employees. The Employer and Intervenor contend that the subject document constitutes a bar to the present petition. The Petitioner claims however, that the aforementioned document was subject to ratification by members of the Intervenor and, that since ratification occurred after the filing of this petition, it cannot operate as a bar to the holding of an election herein.

There is no issue that the document in controversy was intended to substitute the collective bargaining agreement between the parties that was extended to August 31, 2002. Thus, the record reflects that in October 2002 the parties met on four separate occasions. Initially, the Employer offered the Intervenor a one-year contract limiting raises to salaries alone during the first year of its existence and with a freeze on the remaining non-economic terms. The Intervenor requested a three-year contract with existing terms except for a re-opener clause in June 2003. However, no agreement was reached until October 29, 2002 when they executed the documents in question consisttng of a part~ally typed seven-page agreement with handwritten additions and deletions.

This document incorporates by reference the expired agreement and August 31, 2002 extension, includes a salary increase for all five bargaining units, access to the Employer~s hospital pharmacy to purchase prescription drugs during weekends and the reopening of contract negotiations in July 2003 on economic benefits and salaries. The terms of this document are to apply retroactively from September 1, 2002 and are to expire by their terms on August 31, 2005. The record reflects that every job classification represented by the five bargaining units was to receive a salary increase effective November 22, 2002. The document aiso contains above the signature lines the following language to wit:

'The Employer and Intervenor contend that Petitioner is not a labor organization within the meaning of the Act The record reflects however, that Petitioner ~s a newly created organization where employees are expected to participate and which will represent the petiVoned-for employees before this Employer with regard to rates of pay, hours and other terms and conditions of employment. Accordingly, I find that *Petitioner* is a labor organization within the meaning of is a labor organizaton within the meaning of Section 2(5) oftheAct. Mac Towing. Inc.. 262 NLRB 1331 (1982)

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>
> "This proposal decided between the parties in collective bargaining will be submitted by the Hospital Committee to the Government Board in full in a session to be held today, 29th of October 2002.

It is axiomatic that for a collective bargaining agreement to serve as a bar to a petition the contract must be in writing, signed before the rival petition is filed, contain substantial terms and conditions of employment, encompass the employees involved in the petition, and cover an appropriate unit. *Appalachian Shale Products Co.,* 121 NLRB 1160 (1968). Where ratification is a condition precedent to the contract's validity, the contract will not serve as a bar unless it is ratified prior to the filing of the rivat petition. If the contract itself contains no express provision for prior ratification, then employee approva' is not a condition for the contract to constitute a bar to an election. See *Appalachian Shale,* supra, at 1163.

In the instant case most of the requisite elements of a contract appear to have been met as the document was written, signed, contained substantial terms and conditions of employment, and covered the employees in the appropriate units herein. However, the parties disagree over whether ratification by Union members was a requisite to validate the Agreement contained in the aforementioned document that was signed on October 29, 2002 or the day before the filing of the petition herein. In this respect, the language used by this document raises the question of whether the Intervenor's negotiating committee's signature on the agreement was intended to bind the Intervenor to the terms and conditions as set forth in the document or, on the contrary, whether further action was required to obtain a final agreement. Consequently, the Petitioner argues that the last paragraph of the document creates a requirement of acceptance by tntervenor~s members before it becomes effective, whereas the Employer and the Intervenor contend that employees were not required to approve or accept the same and that the document became effective on the date of signing.

A simple reading of the language used in this document, however, reveals that the Intervenor's negotiating committee's signature therein was qualified by the statement: "The Union will submit this proposal to the consideration of the members..." The Employer and the Intervenor presented evidence to suggest that the word 'consideration" really means "orientation" in this context and not "approval'.[5] However, a more reasonable reading of this word suggests more than merely orientation as

'To support this inference they provided the testimony of two bargaining committee members. In this respect, Ivan Luis D~az testified that an "orientation" was, in fact, held at Employer facilities on October 31, 2002. Additionally, Johnny Velez testified that during the negotiations "~.we discussed that we needed to give an ~orientation" to employees about the new agreement .According to Mr. Vélez the word ~considerationN meant "orientation" and therefore, did not imply pre-approval.

propounded herein. Rather, under this context, the word [1]consideration" simply implies "acceptance" or "approval" by Intervenor's members as a condition precedent to the document[1]s validity. The evidence clearly reveals that this acceptance or approval did not occur prior to the filing of the petition herein on October 30, 2002.

The Board has he'd that when contractual language is ambiguous, it will engage in contract interpretation to determine the effect of ratification language in a contract however, this contract interpretation cannot include the examination of parole evidence. See *United Health Care Services. Inc.,* 326 NLRB 1379 (1998); Mericoj~., 207 NLRB 101 (1973). This reading is further bolstered by the parties~ statement that they have reached agreement at their respective negotiating authority. With regard to the Employer the document states that this "proposal" will be submitted to the Government Board", a higher governing authority of the hospital. The instant case contains language comparable to the one in used in the case of Merico, Inc., supra, where the parties stipulated "..The Union Committee is unanimous for acceptance and each member is hereby pledged to recommend this agreement for ratification by the membership at Fort Payne. Alabama". The Board found that this language indicated that certain contractual terms were acceptable to the negotiation committees, but that it did not evidence a binding contract in the absence of the employees' approval. Based on the foregoing, I conclude that the October 29, 2002 document does not operate as a bar to the instant petition herein because employee ratification was a condition precedent thereto, and that accordingly, a question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(b) and Section 2(6) and (7) of the Act. shall, therefore, direct an election in the five units herein.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: ~

Unit A:
Included: All Diet and Cafeteria Department employees emptoyed by the Employer at its facility in Ponce, PR.
Excluded: All other employees, administrative and managerial personnel, supervisors and guards as defined in the Act.

Unit B:
Included: All Housekeeping employees employed by the Employer at its facility ~n Ponce, PR.
Excluded: AH other employees, administrative and managerial personnel, supervisors and guards as defined in the Act.

[6] In this regard, the normal use of the word consideration presupposes deliberation, contemplation and
reflection on the terms of the Agreement requiring either approval or thsapprovai of its terms and
conditions

~ The five units appear as stipulated to by the parties at the Hearing. Unit A has 23 employees; Unit B,
33; Unit C. 76; Unit 0. 66; and Unit E, 103 employees.

Unit C:
Included: All Technical and Professional employees employed by the Employer at facility in Ponce, PR.
Excluded: All other employees, administrative and managerial personnel, confidential employees, medical doctors, supervisors and guards as defined in the Act.

Unit D:
~nc~uded: All Practical Nurses employed by the Empbyer at its facihty located in Ponce, PR.
Excluded: All other employees, administrative and managerial personn&, supervisors and guards as defined in the Act.

Unit E:
Included: All Maintenance and Clerical employees employed by the Employer at its facility in Ponce, PR.
Excluded: All other employees, administrative and managerial personnel, confidential employees supervisors and guards as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the emptoyees in the unit found appropriate at the time and place set forth in the notices of e'ection to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the erection date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the mititary services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the

To ensure that all eligible emp'oyees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to

election date and who have been permanentiy replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Sindicato Independiente de Cilnicas y Hospitales del Sur or Sindicato Puertorriqueño de Trabajadores or no labor organization.

LIST OF VOTERS

have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 *(1966); NLRB v Wyman-Gordon Company,* 394 U.S. 759 (1969). According'y, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall fi)e with the undersigned, two **(2) copies** of an election eligibility hst containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility,* 315 NLRB **359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regiona' office, La Torre de Plaza, Suite 1002, 525 F.D. Roosev&t Avenue, San Juan, Puerto Rico 00918-1002, on or before December 20, 2002. No extension of time to file** this list **shall be granted except** in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the **Boards** Rules and Regulations, a request for review of this Dec~sion may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington. DC 20570. This request must be received by the Board in Washington by December 27, 2002.

Dated at San Juan, Puerto Rico this 13th day of December 2002.

Luis F. Padilla

Acting Regional Director

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